tion and separation of the mineral matter ceased, but that after a still further reduction, it apparently began again. This renewed separation was not due to the agglomerating and lifting force of the oil, but to the fact that the minute quantity of oil in the water caused bubbles of air, introduced by the agitation of the mass, to remain for a time undissipated from the surface. These bubbles attached themselves to the particles of mineral and caused such particles to float clear of the rocky material. A patent was granted for this process.

The process of the patentees was old in all respects except that of the principle involved. As the Circuit Court of Appeals said (214 Fed. 100, 109), "each step in their process is fully described in more than one of the patents of the prior art, with the single exception of the reduced quantity of oil which they use." That court, therefore, held the patent to be invalid. The Supreme Court reversed this decision, on the sole expressed ground that the "advance on the prior art and the resulting froth concentrate, so different from the product of other processes, make of it a patentable discovery as new and original as it has proved useful and economical." The invention must have lain in the reduction of the amount of oil, but this change, in itself, was too slight to have constituted a new process. The process was new because, by the reduction in amount of oil, it utilized a new principle, or principles, of nature. So many other cases have distinguished between apparently similar processes or machines because of a difference in their "principles of operation" that it is unnecessary to cite particular authority, but the case just discussed reveals the effect of the principle used with especial clearness. It is undoubtedly true that a principle of nature or a natural force can not by itself be monopolized by patenting, but it seems equally true that, like substantial wheels and levers, and other individually unpatentable things, a principle of nature, as the only new part of a novel combination, is often patented to the extent of its use in such combination or its equivalents.

J. B. W.

"Obtaining Property by False Pretenses" in Bankruptcy.—When is "property"obtained by false pretenses or representations within the meaning of §17 of the Bankruptcy Act? In the recent case of *In the Matter of Dunfee,* 114 N. E. 52, B had defaulted on a bond upon which, through B's false representations, A had become surety and by means of which bond B had obtained money from C; A was compelled to pay and recovered judgment against B, who then became a bankrupt and procured a discharge. On the ground that the guaranty on the bond was "property" within the meaning of § 17, which provides that liabilities for obtaining property by false pretenses or representations are not released by a discharge in bankruptcy, the New York Court of Appeals held that B remained liable.

The same conclusion was reached in *Gaddy* v. *Witt* (Tex. Civ. App. 1911), 142 S. W. 926, where the surety paid no money but merely executed a note to the original obligee, on the default of the principal; but the opposite was held in *In re Tanner,* 192 Fed. 572, 27 Am. Bank. R. 615. The former case throws no light on the question, since the court cited no authority and gave no reasons, but contented itself with the statement that "the statute * * *

should be liberally construed so as to prevent the discharge in bankruptcy from relieving against a liability which would not exist but for the fraudulent conduct of the defendant," thus assuming the answer to its problem. The latter decision, relied upon in the instant case in the lower court (*In re Dunfee,* 159 N. Y. Supp. 703, 94 Misc. Rep. 628), was decided under § 14b as it read before the amendment of 1910, providing that a discharge shall be given the bankrupt unless he has "obtained *property* on credit * * * upon a materially false statement in writing * * * ." By § 17, a discharge releases a bankrupt from all his provable debts except such as are "liabilities for obtaining *property* by false pretenses or false representations." The court places its decision on the ground that "by the insertion of the words 'money or' before the word 'property' in the amendment of 1910, Congress manifestly *doubted* whether the term 'property' as used in the amendment of 1903 was comprehensive enough to include money; and if it did not include money *most assuredly it did not include a contract or obligation such as this.*" (192 Fed. at p. 574.)

In order to simplify the discussion it is assumed for the present that if the term "property" includes money the conclusion of the court as italicized, follows. If this argument—disregarding the italicized conclusion—is sound, then the decision in the principal case is clearly wrong, for in omitting to amend § 17, which is analogous to §14b, Congress would have intended that money should not be included in the term "property" within the meaning of § 17. But it had been decided in *In re Pfaffinger,* 154 Fed. 328 (C. C. A.), 19 Am. B. R. 309, and in *In re Gilpin,* 160 Fed. 171, 20 Am. B. R. 374, that "property" in § 14b included money. Justice LURTON (then Circuit Judge) said, in *Firestone* v. *Harvey,* 174 Fed. 574, 98 C. C. A. 420, that this ground for denying a discharge was evidently leveled particularly at the practice of making false statements of one's financial condition by a buyer or borrower for the purpose of obtaining from the person to whom such false statement is made * * * the articles or money desired." The court in the *Pfaffinger* case says, "One of the common crimes is obtaining property under false pretenses. It has never been restricted to the obtaining of property other than money, but to the obtaining of property including money. Money is property in its most available and efficient form." It would seem then, that Congress had little room to doubt that money was in § 14b included within the term "property," but even if (for the sake of argument) it is admitted that such a doubt existed as would warrant removal by amendment, it would indeed be an unusual method of reasoning by which one would reach the conclusion that thereby Congress, when it *enacted* this provision of the Bankruptcy Act (§ 14b), did not intend money to be included within the term "property."

It appears thus far that the arguments of the courts in the *Gaddy* and *Tanner* cases are not supportable. Are the decisions correct independent of such argument? If "property" in § 14b did not include money before the amendment of 1910, then it did not under § 17 and *In re Tanner* would be correct; but the decisions in the *Pfaffinger* and *Gilpin* cases negative this premise, and hence the conclusion in the *Tanner* case. If, before the amend-

ment, "property" in § 14b included money—and hence the added words "or money" are surplusage—then there are two possible effects of the amendment on the meaning of the word "property" in § 17; either Congress intended merely to dispel any uncertainty as to the interpretation to be placed on § 14 b, leaving the word "property" in § 17 unaffected, or it intended to make § 14b more certain and in addition to cut down the meaning of the word in § 17 so as to exclude money. Had the latter been its intention, it would more likely have made clear that intention by dealing directly with the term in § 17, rather than by leaving its meaning to be speculated upon, especially since Congress was at the time dealing with that very section of the act. It would seem then that the holding in the principal case that money is included in the term "property" is correct and the argument in the *Tanner* case incorrect. It is significant that in only one case other than the *Tanner* case (*Hallagan* v. *Dowell,* (Iowa 1913) 139 N. W. 883), has it ever been urged that "property" in § 17 did not include money, but the decision therein that money is "property" sheds no light on this discussion, because the court gives no argument and cites no authority other than Webster's dictionary.

Thus far we have considered only the nature of that which is ultimately obtained—money, goods, etc.—without reference to the question of remoteness—that is, as to how obtained, whether directly after the false pretenses or representations are made, or whether some intermediate legal obligation arises after the pretenses, but before the "property" is parted with, as in the present surety transaction. The point in the principal case that the money passed from the surety to the original obligee and not to the principal debtor seems in cases like the present to be immaterial and is met by the court with the statement from *Garr* v. *Martin,* 20 N. Y. 306, 309, that "where one person advances money for another in payment of the debt of the latter, it is deemed at the instant of its payment, to be the money of the party for whose benefit the payment is made; so that in the eye of the law the debt is satisfied not by the money of a third party, but by that of the debtor himself." *Musgrove* v. *State,* 133 Ind. 297, 32 N. E. 895, is to the same effect.

In *Gleason* v. *Thaw,* 185 Fed. 345, 25 Am. B. R. 782 (affirmed in 236 U. S. 558), it was held that obtaining a promise to perform legal services (and later the services themselves) by means of false pretenses and representations was not obtaining "property" within the meaning of § 17. The court, referring to the language under consideration, states that these words "refer to substantive things—a *res*—and in no case to which our attention has been called is anything included * * * which approaches in its description or definition, services rendered." The United States Supreme Court in that case says that "property" in § 17 denotes something which may be brought within the control of the court by some recognized process. The court in the principal case therefore holds that the *Thaw* decision is inapplicable, since here it is money which is obtained.

It is seen thus far that "property" within § 17 must be of a tangible nature —a *res*—such as goods or money. It now remains to be considered whether it makes a difference that the property is handed over immediately after the false pretenses or representations are made, or whether more remotely, as in

performance of a contract induced by such representations or pretenses, or as the result of a surety transaction likewise induced.

Criminal liability for the conduct condemned in § 17 dates back to the statute of 30 Geo. II, c. 24 (1757), which provided for the punishment of "all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, money, goods, wares or merchandizes * * *." The problem of determining what proximity is necessary between the pretense and obtaining the *res* has come up many times in criminal prosecutions under this and similar statutes. In *Queen* v. *Abbott,* 2 Cox C. C. 431, the defendant who had in a single transaction falsely represented the quality of certain cheese, induced a contract of sale, made delivery and received payment in money, was found guilty. The same conclusion was reached in *Reg.* v. *Martin,* 10 Cox C. C. 383, the defendant having obtained a wagon not in existence at the time the contract of manufacture and sale (induced by false pretenses) was made. It is therein stated that the "test is whether there is a direct connection between the delivery of the chattel and making the false pretenses, or in other words whether the false pretense is a continuing false pretense. In all cases that is a question for the jury." In *Wilkerson* v. *State,* 140 Ala. 155, obtaining goods two months after the mortgage for future advances was induced was not too remote. In *Reg.* v. *Larner,* 14 Cox C. C. 497, the defendant obtained his competitor's ticket for the race, obtained an undeserved handicap and won the prize; the pretense was held too remote: but in *Queen* v. *Button* [1900], 2 Q. B. 597, under identical facts, the contrary was held, and *Reg.* v. *Larner* disapproved. *Reg.* v. *Bryan,* 2 Fost. & F. 567, held the defendant not guilty who had obtained board by false pretenses and later borrowed money without making further pretenses. In *Reg.* v. *Gardner,* 2 D. & B. 41, 7 Cox C. C. 136, the same result was reached, the defendant having obtained lodging by false pretenses and later money without further pretenses. In *Commonwealth* v. *Harkens,* 128 Mass. 85, the court by a decision of four to three, held that obtaining money on a judgment upon which default had been induced by false pretenses was too remote, the three dissenting judges supporting the rule laid down in *Reg.* v. *Martin,* supra.

Were the rule laid down in *Reg.* v. *Martin* applied to these cases they would all be affirmed except *Reg.* v. *Larner,* (overruled by *Queen* v. *Button*), and *Commonwealth* v. *Harkins,* dissented from by three of the seven judges. The principal case would be affirmed and the *Tanner* case reversed. More definitely expressed, "property" is obtained by false pretenses within the meaning of § 17 when such pretenses are made with the intent that they should, or when the party making them might reasonably expect that they would, immediately or at some future time (proximately) result in the passing of a *res,* from the party to whom the pretenses are made to the party making them, or, as in the principal case, to a third party. No reason appears why, on the question of proximity, the rule in criminal cases as to obtaining property by false pretenses is not applicable to § 17 of the BANKRUPTCY ACT.

Is "property" obtained within the meaning of § 17 when through false

pretenses the surety assumes a contingent obligation or when, on the default of the principal debtor, the obligation becomes absolute, or only when the surety actually parts with the *res* (money)? In most cases, as in the principal one, the *res* actually passes before the discharge of the bankrupt and there is no doubt that "property" is obtained, but where all that is obtained is a promise to pay money if the principal debtor fails to pay, and at the time of the discharge in bankruptcy of the latter the surety has not parted with a *res,* but his obligation to do so has become absolute, it can at least be said, applying the rules laid down in the previous paragraph as to obtaining "property" by false pretenses and substituting the phrase "obligation to part with property" for the words "property" and *res,* that the obligation is obtained by false pretenses. Under the early statutes such phrases as "goods, wares, and merchandise" and "money or property" were not broad enough to include promissory notes and the like, and would not include this obligation. The operation of modern statutes has been extended by adding such words as "money, goods, chattels, things in action, and evidences of debt." *People* v. *Reed,* 70 Cal. 533; *State of Iowa* v. *Patty,* 97 Ia. 373. There is not such a difference in the nature, purpose, and language of the BANKRUPTCY ACT and of the section under discussion as to warrant a distinction, hence an additional requirement must therefore be added to the definition laid down in the previous paragraph, namely, that the *res* must actually be parted with by the person to whom the false pretenses are made. If the absolute obligation to pay is not "property," neither is the contingent or inchoate obligation.

It will be interesting to note the result if this precise problem is ever brought before a court, if it should be held that the *res* must actually pass and if the decision in *Williams, et al* v. *United States Fidelity and Guaranty Company,* 236 U. S. 549, 35 Sup. Ct. 289, in which no question of false pretenses is involved, is followed. In that case the principal had defaulted and had received a discharge in bankruptcy from his obligation to the principal, but the surety had not at that time paid the principal creditor. It was nevertheless held that the principal debtor's inchoate obligation to indemnify his surety was also discharged. But if the surety's inchoate obligation or even his absolute obligation, obtained by false pretenses, is not "property" within the meaning of § 17, and if the *Williams* case is followed, the surety, after the principal's discharge, will have no redress against him and will still be liable to the principal creditor. For a full discussion of *Williams et al.* v. *United States Fidelity and Guaranty Company* see 13 MICH. L. REV. 500.

S. D. F.

SET-OFFS AND PREFERENCES.—§ 68a of the BANKRUPTCY ACT provides that "in all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid." The courts are experiencing considerable difficulty in determining whether this provision makes it possible for a bank to retain as against the trustee in bankruptcy the amount of a depositor's check received by the bank within four months of the depositor's insolvency, and with reasonable cause to be-